

Statement of

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Before the

Subcommittee on Communications

Committee on Commerce, Science and Transportation

of the

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JERRY CERASALE
on Behalf of
DIRECT MARKETING ASSOCIATION
Before the
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Good morning, Chairman Burns and members of the Subcommittee. It is an honor to be asked to testify today on behalf of the Direct Marketing Association concerning the issue of unsolicited commercial e-mail.

I am Jerry Cerasale, Senior Vice President, Government Affairs for the Direct Marketing Association (The DMA). The DMA represents over 3,600 corporate members who are direct marketers, both domestic and international, and their suppliers and support services.

The DMA is very interested in any regulation of electronic commerce. Over 85% of DMA members are involved in some form of electronic commerce, although we do not know of any members presently using e-mail for marketing to prospective customers, as opposed to reaching current customers. With the rapid changes in communications technology, we believe that no method of communication for commerce should be eliminated.

However, The DMA does agree that many current uses of unsolicited e-mail are not appropriate for legitimate marketing and must be curtailed. We believe that Congress should examine approaches to eliminate inappropriate uses without eliminating the medium of e-mail altogether. We can envision, for example, the use of e-mail to deliver coupons to consumers, a very different and far more positive use of e-mail than the current stream of often fraudulent and x-rated offers.

Marketers have been very creative in providing products that American consumers want through the traditional media of mail, telephone, and direct advertising. The DMA wants to keep the new option of electronic communication open, not eliminate it by government regulation, either domestically and internationally.

We also believe that there are market forces that discourage legitimate companies from engaging in mass unsolicited e-mailing. The direct marketing field is very customer-oriented, and legitimate companies must provide good customer service, not anger their customers.

Direct marketing is a growing business which meets the needs of time-pressed consumers. It is also growing rapidly in the business-to-business market as businesses

discover the time-saving convenience of ordering directly. The economic impact of direct marketing in the United States is \$1.2 trillion annually, creating over 12 million American jobs.

Direct marketing is also growing rapidly internationally. American companies can export products without the need to build any infrastructure in foreign countries. All that is needed are a means to solicit orders, accept orders, and deliver the product. Electronic commerce is a new medium that offers companies and customers throughout the world the convenience of at-home or at-the-office shopping. Any attempt to regulate electronic commerce must be tempered by consideration for its vast potential for commercial growth, convenience to customers, and new jobs created.

Electronic commerce, of which e-mail is a part, is new. It must be allowed to mature--with all its growing pains. The government, however good its intentions, should not strangle electronic commerce at birth. There are ample means to combat fraud in existence, and there are bills in Congress now which can provide American consumers with the mechanisms to avoid unsolicited e-mail.

The DMA position on unsolicited bulk e-mail is that individuals should be able to opt out from receiving it. The DMA has established principles for marketing online in conjunction with the Interactive Services Association. Those principles are attached to my testimony today. One section of these principles is "Unsolicited Marketing E-Mail". The principles state:

- Solicitations posted to news groups, bulletin boards, and chat rooms must be consistent with the forum's stated policies.
- Online e-mail solicitations should be clearly identified and should furnish a means to opt out.
- Individuals whose e-mail addresses have been collected from online activities should be offered a means to opt out.
- Operators of chat areas, etc., should inform individuals that any information disclosed in the chat area may result in unsolicited messages.

The DMA envisions a two-pronged opt-out program. First, however, any e-mail marketer should **abide by the "rules of the forum"** unless the marketer has an existing relationship with the addressee. Thus, the rules on e-mail established by Internet service providers, AOL, for example, would apply to all e-mails sent to an AOL address. This approach is contained in S. 875, introduced by Senator Torricelli. We understand that unsolicited e-mail can increase costs and use up server capacity. This approach gives Internet service providers some control over the use of their capacity and costs.

The first prong of any opt-out plan is that the recipient of an unsolicited bulk e-

mail **should be able to request that the marketer not send any more e-mails** to that address. This could be done *via* the reply key. This is the approach taken in S. 771, introduced by Senator Murkowski, which was merged into S. 1618 and passed by the Senate.

The DMA is actively working on the second prong for opt-out. We are now reviewing proposals to create an “e-mail preference service” (e-MPS) and hope to announce the award of a contract in the near future. An e-MPS would allow consumers to add their e-mail addresses, on line, to a list **at no charge; marketers would then use this list to delete the addresses from their e-mail list**. This is similar to The DMA’s mail and telephone preference services, which have been working in the marketplace for many years (MPS began in 1971 and TPS in 1985). This approach is also in S. 875. In addition, starting in July 1999, DMA members will be required to use e-MPS as well as MPS and TPS as a condition of membership.

With these two prongs, consumers can limit all e-mail through e-MPS or company specific e-mail through the reply key opt-out. Moreover, Internet service providers can create and then market different “rules of the forum” concerning e-mail.

This approach is far superior to banning the use of e-mail to reach prospective customers. E-mail, the Internet, and the World Wide Web are still new means of communications for most Americans. They are also ever-changing technologies. The DMA believes that these new forms of communication should be allowed to grow and mature. Prohibition of e-mail will not allow the growth of the medium. New filtering technologies, more rapid access, and new means of connection to the Internet could alter the use and efficacy of e-mail solicitations. A ban on the use of commercial e-mail is premature at best and may be counterproductive by “chilling” advancement of certain new technologies.

The DMA believes that the government should enhance its efforts to combat fraud on the Internet and, specifically, in e-mail. Fraud should be severely punished whether made on paper, over the air waves, over phone lines, or on the Net. It is a cancer to all commerce regardless of the medium used, and it should be eradicated.

Again, I thank you for the opportunity to be here today, and I am available to answer any questions.